



CONGRESSIONAL HEARING RESUME

106th Congress
2nd Session

Date: 29 Mar 00

SUBJECT: EEO Data and Complaint Processing Problems

COMMITTEE: Subcommittee on Civil Service, House Government Reform Committee

CHAIRMAN: The Honorable Joe Scarborough

MEMBERS PRESENT (bold face):

REPUBLICANS

Joe Scarborough, (R-FL)
Asa Hutchinson (R-AR)
John L. Mica (R-FL)
Constance Morella (R-MD)
Dan Miller (R-FL)

DEMOCRATS

Elijah E. Cummings (D-MD)
Eleanor Holmes Norton (D-DC)
Patrick Kennedy, (D-RI)
Thomas H. Allen (D-ME)

WITNESSES: See next page

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Date: 29 March 00

Ext: 697-1623

WITNESSES

PANEL ONE:

The Honorable Albert R. Wynn (D-MD)
Member of Congress

PANEL TWO:

Carlton Hadden
Acting Director of Federal Operations
Equal Employment Opportunity Commission

Michael Brostek
Associate Director, Federal Management and Workforce Issues
General Accounting Office

PANEL THREE:

Gerald R. Reed
President, Blacks in Government

Cynthia Hallberlin
Chief Counsel of Alternative Dispute Resolution Program
National Program Manager of REDRESS
United States Postal Service

Roger Blanchard
Assistant Deputy Chief of Staff, Personnel
United States Air Force

Joe McDade
Associate General Counsel
United States Air Force

EXECUTIVE SUMMARY

Chairman Scarborough stated that there are serious shortcomings in equal opportunity data and complaint processing. Federal employees do not have a fair, timely, nor efficient procedure for resolving Equal Employment Opportunity (EEO) complaints. The time it takes for a complaint to travel through the process is appalling. According to the GAO, the average processing time from the date an initial complaint is filed to the date the Equal Employment Opportunity Commission (EEOC) issues its final ruling is three years. Also, the EEOC cannot answer fundamental questions about the nature and extent of workplace conflicts. Because the EEOC does not collect and report the necessary data, it cannot tell Congress how many individuals filed complaints, were these complaints based on race or sex, and what kind of actions give rise to the most complaints. What little data EEOC has is unreliable. The purpose of the hearing was to discuss ways for the EEOC to reduce its case inventories and process complaints more quickly. One option is the use Alternative Dispute Resolution (ADR) techniques. The Air Force was invited to testify as an example of a successful EEO ADR program.

The Subcommittee was called to order at 1014.

Chairman Scarborough's Opening Statement

- Emphasized that he expects the EEOC to reduce its case inventories and process claims more quickly. Also, he wanted assurances from EEOC that the data problems will be corrected.

Rep Cummings:

- Justice delayed is justice denied. EEOC's slow processing times have a negative effect on families both financially and stress-related. He is considering whether Congress should mandate to the EEOC that they use the Internet for data collection. Although, he finds EEOC's problems disheartening, more importantly, he still sees no effort on the part of the EEOC to reduce discrimination. That should be the end result of the EEOC process.

Del Norton:

- When she was director of the EEOC, EEOC had a two-year backlog, she brought the backlog down to 3 months. There is a fatal flaw in the EEOC process, complaints of federal employees are processed differently from those in private companies. The federal employees have to have their grievance heard by the same organization that they are accusing. As to more financial resources for the EEOC, the EEOC needs to prove it can achieve greater efficiencies.

Rep Morella:

- She questions whether recent changes in the EEOC will be effective. She wonders why the EEOC has done nothing to reduce or eliminate discrimination. She also thinks that ADR should be mandated.

PANEL ONE:

Rep Wynn:

- The problems with EEOC are systemic. There are three aspects to the problem. The first is a lack of diversity in senior management. The second is a pervasive and discriminatory misuse of personnel laws. The third is the enormous backlog of EEO complaints against federal agencies. Congress has asked the President to address these issues and to demand accountability from his cabinet and agency heads. Rep Wynn requested the GAO to look into the problems. He asked them to develop information about the statutory bases for the alleged discrimination and the kinds of issues cited in the complaints. The GAO was unable to do this, because the EEOC did not possess this information. The EEO process must be addressed. It is underfunded, ineffective, has a serious backlog, and is often not taken seriously by the organizations it monitors. He is very pro ADR to help resolve these issues.

PANEL TWO:**Mr Hadden, EEOC**

- A number of changes have been implemented to improve the process. One change, which is critical to EEOC's success, is that agencies institute ADR. Also, the authority of EEOC judges has been enhanced. Additional changes include provisions to reduce case fragmentation, elimination of multiple appeals in single cases, a revamped class action process, and a streamlined reconsideration process.

Mr Brostek, GAO

- The number of discrimination complaints by federal employees grew during the 1990s, overwhelming the ability of the agencies and the EEOC to process cases in a timely manner.

- The kinds of data EEOC collected did not provide answers to such basic questions as the number of employees filing complaints, the kinds of discrimination they were alleging, or the specific conditions or events that caused them to file.

- Although EEOC traditionally has focussed on complaint processing and adjudication, it is important to remember that EEOC identifies its broader mission as eradicating discrimination in the workplace. GAO did not comment on whether they were achieving that mission.

PANEL 3:**Mr Blanchard, USAF**

- **Chairman Scarborough thanked the Air Force for the great work done by the Air Force in the area of ADR in EEO complaints.**

- **The Air Force has an award winning program but is striving to improve it. Mediation has been successful. ADR helps resolve approximately 70 percent of workplace disputes in which it is attempted. Air Force believes a 70-75 percent resolution rate represents a realistic goal for ADR programs.**

- **Successful implementation of ADR within an agency depends on strong support from senior management, several employees working full-time on implementing ADR initiatives as well as matching agency ADR needs with**

appropriate government and private-sector resources, extensive ADR training and awareness briefings, and financial support for ADR initiatives.

Ms Hallberlin, Postal Service

- Introduced Resolve Employment Disputes, Reach Equitable Solutions Swiftly (REDRESS), the Postal Services ADR process

Mr. Reed, President, Blacks in Government

- Massive Federal Mismanagement should be a Criminal Offense
- The EEOC handles complaints in a way that makes it impossible to capture the full extent of employment discrimination in the government. The government eliminates some 60-70 percent of the complaints by nefarious techniques. Federal agencies freely adopt hidden policies to sabotage employees' EEO cases. Employees generally have no effective venue of redress when their complaints have been sabotaged. If more federal employees were financially able to bear the cost of litigation, there would be a tidal wave of Title VII lawsuits filed in federal court. The programs of government reinvention have compromised the weak EEO complaint process by providing more management autonomy to discriminate without accountability. EEOC does not monitor how agencies mismanage the EEO complaint process. EEOC timeline guidelines for processing complaints are typically ignored by the agencies. In a vicious assault on the whole EEO process, the Federal government now provides professional liability insurance protection to federal managers.

- Recommendations. Congress should totally reinvent the EEOC and make it responsive and accountable to regulatory guidelines. The defendant agency should bear all expenses in cases in which the plaintiffs prevail. Congress should give the EEOC subpoena power over retired government employees. Congress should take the decision-making authority in the EEO complaint process away from the agencies and place it in the EEOC. Congress should make violations of Title VII criminal. **(Chairman Scarborough requested the Air Force comment on this recommendation within the next two weeks).** Congress should repeal federal law providing for the payment of premiums for professional liability insurance for federal managers.

- **Rep Cummings asked Mr. Reed to compose legislation covering these areas and provide it to him.**